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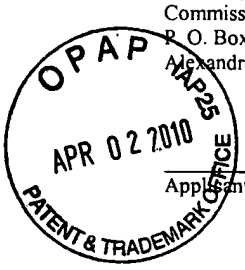
Mail Stop: Petition to the PTO commissioner Objections on procedural matters
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450 on March 31, 2010



Applicant (Peter Migaly, M.D.) March 31, 2010 Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of	:	COMBINATION THERAPY FOR DEPRESSION, PREVENTION OF SUICIDE, AND VARIOUS MEDICAL AND PSYCHIATRIC CONDITIONS
Peter Migaly	:	
Application Serial Number 10/627,358	:	pro se (no layer) case
Filing Date: July 23, 2003	:	former ~~Docket Number: 290194-00001~~
Examiner: Eric Olson	:	Art Unit 1614

Objections on procedural matters, petition to the PTO commissioner to overrule a subordinate.

March 31, 2010

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This is an **objections on procedural matters - petition to the PTO commissioner to overrule a subordinate - with** verified showing (declaration).

This has been filed after this applicant responding on March 11, 2010 to the Final Office Action Dated September 11, 2009.

In addition, please note that the **Applicant has lost his attorney representation, is relying on your guidance**, and that his best (timely) contact is through his cell phone **(724)840-0464**
His address is Peter Migaly P. O. Box 237 Blairsville PA 15717

Objections on procedural matters
- petition to the PTO commissioner to overrule a subordinate.

From the book Patent it yourself by patent attorney David Pressman, Nolo, 2004 p. 13/50-51:
"If the examiner has made objections that [the applicant] thinks is wrong or if [the applicant] thinks [the applicant] has been treated unfairly or illegally, [the applicant] can petition the Commissioner to overrule a subordinate."

Declaration (for objections on procedural matters (pages 3-22 of my petition of March 11, 2009, and of my statements of my amendments and response dated March 11, 2010, and for this petition):

I hereby declare that all statements made herein of my own knowledge, and to my best recollection, and to my opinion, and to my professional opinion, and to my discoveries and facts presented herein are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Peter Migaly, M.D. March 31, 2010

It is of note that the applicant's prior petition to the Commissioner of Patents submitted March 11, 2009 had been denied.
It is of note that in the said previous petition the applicant brought up a number of very specific points supported with facts and factual examples (even pointing to these by page numbers where these occurred).
The PTO did not address any of the very specific points with any conterarguments or any reasoning for why these points were not valid or why they did not constitute an error in the action of the examiners. Instaid the PTO just issued an opinion that the said prior petition "does not set forth 'any specific action or requirement of any examiner' which is in **error** (emphasis added)", and thus **denied** the petition.
It is not only difficult but it is impossible to reason with the PTO and to give a counterargument if the PTO only issues an opinion and refrains from any explanation or reasoning for their decision.
This should not be within the spirit of an evaluation process, nor should that be helping the applicant (who is without attorney representation) as without explanation from the PTO he cannot even guess what the PTO had in mind.
In fact according the book by patent attorney David Pressman Patent it yourself (10th edition page 1/2), "PTO regulations (MPEP, Section 707.07 (j)) specifically require patent examiners [and added in the same spirit the Commissioner for patents when petitioning] to help inventors in pro se (no lawyer) cases".

Therefore we specifically request that the Commissioner for Patents would specifically address each and every points we have raised both in the applicant's petition of March 11, 2009, and in the further clarified facts that the applicant presented in his response dated March 11, 2010.

In order to keep the page numbers concise, instead of pasting these responses here, we explicitely incorporate these prior correspondence to the PTO herein by reference. (Please refer to these documents in drafting your reply).

Due to the undue burden that it would result to the applicant the reply is expected from the Commissioner for patents and not to be delegated back to the examiners for said reasons revealed in the prior petition.
All the facts were presented as evidence and not speculations and what were presented in the prior petition and above said reply are all maintained under declaration set forth above.

It is also of note:
"The applicant objects to the re-phrasing his petition to the Commissioner of Patents as insults directed at the examiner(s). The applicant considers himself a well trained psychiatrist, and as such it is standard in his practice (when he deals with patients) to document behaviors objectively and not use so called "labeling" that is a "no-no" in the field. So the applicant (even in non-patient setting) paid special attention of phrasing his observations objectively, and in a way of staying within the boundary set by his profession (for example using the language often used in psychological tests – and still avoid "labeling"). The applicant presented factual observations (including specific data pointing to the fact that the examiner(s) have not even read his application and submitted materials in full. (The facts still point to that direction even if the examiner insists otherwise). The applicant's objective was to get resolution to his complaints, to get acknowledgement to his questions, and to point to the seriousness of the matter (and not to insult anybody). As I remember, the petition even contained an apology – even though the applicant viewed himself in the position of a victim.
The complaints have been made (and addressed to) in a petition to the Commissioner of Patents."

The PTO examiners have made a number of (repeated) errors, and had (repeated) unconvincing line of reasoning. The Commissioner for Patents may possibly view that these "unconvincing line of reasoning" are within the **merit** of the application and not within **a procedural matter**, however when this behavior pattern is kept repeating so many times (and with the facts being repeatedly disregarded); that behavior then can reasonably be also considered as procedural matter. When this is presented in the context of the "pseudo-scientific patterns of behavior", that without doubt would place them into procedural matters. Please note that the applicant in his prior petition has identified 34 such different pseudo-scientific patterns (patterns that the examiners have repeated almost countless of times).

It is also of note that the very specific complaints and evidence that **the examiners have not read the applicant's submitted communications in full continued in the last office action** (OA).

For example in page 7 line 15-17 of the last OA the examiner(s) keep pasting the same reply that no theory [or explanation] was given – which is clearly an incorrect statement and that conclusion can only be drawn by disregarding the facts: "In the absence of any general theory explaining the action of atypical antipsychotic drugs to enhance therapeutic outcomes with antidepressants, it is not possible to predict the efficacy of any particular antipsychotic..."

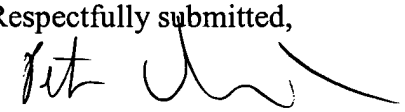
The last OA is also refrasing a document from 2008 that we brought to the PTO's attention that this document – despite being published years after our priority date – is a "prior art document". How

can that mistake be made unless the examiner(s) were not reading the correspondence to the PTO in full and with the expected attention. I do no longer want to go through a painstaking job of rehashing all the details (and corresponding factual examples) that my petition on procedural matters was indeed supported. Instead I refer back to the said documents (my petition of March 11, 2009, and of my statements of my response dated March 11, 2010) and expect a detailed reply and reasoning not just an opinion (that carries the risk of disregarding said facts).

Your cooperation to this request is greatly apretiated.

Please note, that the Applicant have lost his attorney representation, and is relying on your guidance.

Respectfully submitted,



Peter Migaly, M.D.